

Use of Facebook as a limited public forum for government bodies (discussion forum)

From: Brian Davison (bcdavison@hotmail.com)
 Sent: Thu 10/13/16 12:08 AM
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 Loudoun County BOS & Loudoun County School Board,

This email serves to provide notice that your Facebook "pages" ('The Official Loudoun County Public Schools', 'Loudoun County Government', 'Loudoun County Animal Services', and any others operated by Loudoun County's government) do not comply with the constitutional protections afforded citizens on limited public forums. Given that these Facebook pages operate as limited public forums, I am providing notice that until technical issues are resolved by Facebook, I believe such pages violate the civil rights of Loudoun citizens including me. I am requesting that you cease and desist hosting comments on these Facebook pages until the technical issues are solved. The use of other discussion forums which comply with constitutional restrictions, in lieu of Facebook "pages", would also satisfy this requirement.

Specifically, Facebook "pages" are deficient in two ways. By Facebook "pages", I am not referring to the personal profile of a verified user of Facebook. I am referring to the abstract "page", defined by Facebook, which may be administered by one or more Facebook users.

1. Facebook's appears to allow third-party users to mark comments as spam either on their own profile, on a non-government entity's page (e.g. newspaper), or directly on a government body's Facebook page. Facebook's spam algorithm then appears to hide certain comments on the government body's Facebook page based on feedback from other users regardless of whether such comments violate lawful regulations (profanity, defamation, etc.). When marked as spam, at best these comments on government "pages" are hidden until the Facebook page's administrator restores them to visibility. At worst, the comments that Facebook's autonomous spam algorithm identifies as spam are irretrievable and hidden from all users viewing the page. When lawful comments posted on your government Facebook pages (limited public forums) are suppressed/hidden, this constitutes a violation of free speech rights under the First Amendment. Furthermore, the lack of prior notice and due process to restore the comments violates the Fourteenth Amendment.

2. Facebook allows users to hide their comments from other targeted users. While Facebook "pages" may not be hidden from any user, a user can still hide their comments made on such Facebook pages from specific targeted users. Any replies to the hidden comment, including replies by public officials, will also be hidden from the targeted user. Note that a "reply" appears indented beneath the hidden comment and is generated by clicking on Facebook's "reply" button immediately underneath the original comment. It is unconstitutional to restrict access to speech

made in a limited public forum. If a government agency, such as the BOS or LCSB, is not able to ensure all citizens can view/hear the speech made by other users on such public Facebook pages, then the use of Facebook pages as limited public forums are unconstitutional.

Facebook provides such "pages" in return for the advertising revenues it gains from hosting the pages. Loudoun County is essentially renting web pages from Facebook by foregoing potential advertising revenues. Loudoun County government bodies engage in the administration of comments on these Facebook pages. You have the ability to hide and/or delete comments regardless of whether such actions are lawful. By operating discussion forums on Facebook pages, you also delegate additional administrative control to Facebook (e.g. spam algorithms) which then becomes a state actor with respect to your limited public forums. Loudoun County government bodies have an obligation to ensure all of its limited public forums comply with constitutional protections. Since it appears you are unable to guarantee such protections on your Facebook pages, I am requesting an immediate cessation of public comment on all Loudoun County Facebook pages.

Please feel free to contact me if you require clarification. I have specific examples of both cases described above on Facebook pages operated by Loudoun County government bodies and/or its officials.

Regards,
Brian Davison